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HARRISBURG

MAR 16 2001

MARY E. D'ANDREA, CLERK

Per _____
DEPUTY CLERK

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

BEVERLY BEAM,
Plaintiff

v.

SCOTT DOWNEY,
ROGER MORRISON,
DAVID GRAYBILL AND
MICHAEL SWEGER,
Defendants

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CIVIL ACTION NO.: 1:CV-01-0083

(Judge McClure)

MOTION TO DISMISS PURSUANT TO FED. R. CIV. P. 12(b)(6) OR IN
THE ALTERNATIVE, FOR A MORE DEFINITE STATEMENT
UNDER FED. R. CIV. P. 12(e)

Defendant, Roger Morrison moves this Court for an order dismissing the Complaint in this action, or, in the alternative, if the Court finds that some claim for relief is set out in the Complaint as currently drafted, an order requiring Plaintiff to restate the Complaint in a form that will permit a responsive pleading, for the following reasons:

1. The Complaint does not comply with the requirement of Fed. R. Civ. P. 8(a)(2) that it “contain a short and plain statement of the claim showing that the pleader is entitled to relief.”

2. The Complaint consists of ten (10) pages and 44 numbered paragraphs and is filled with irrelevant and repetitive characterizations. It is difficult to decipher the relevant facts contained in this disjointed document, let alone determine what claim(s) Plaintiff is attempting to assert.

3. If Plaintiff is attempting to assert procedural and/or substantive due process claims, she fails to state a claim against Morrison because there is no averment or logical inference that he is a state actor nor is there an averment or logical inference that she has a protected property interest.

4. If Plaintiff is attempting to assert an equal protection claim, she fails to state a claim against Morrison because there is no averment or logical inference that he is a state actor, nor is there any averment or logical inference of a suspect classification or impingement on a fundamental interest.

5. Plaintiff's conclusory statement of a non-specified anti-trust violation fails to state a claim, because the complaint fails to set forth the elements of a violation of any anti-trust statute.

6. Plaintiff's Complaint does not aver any effect on interstate commerce.

7. If Plaintiff is claiming breach of contract by Morrison, the complaint has no averment nor is there any logical inference that she had a contract with Morrison.

8. Assuming, arguendo, that there is some valid claim contained in the Complaint, the Complaint is so vague and ambiguous that Morrison cannot reasonably be required to frame a responsive pleading.

WHEREFORE, Morrison requests that Plaintiff's complaint be dismissed as to him or, in the alternative if the Court determines that a valid claim is included with the Complaint, that Plaintiff be ordered to provide a more definite statement.

Respectfully submitted,

METTE, EVANS & WOODSIDE

By: P. Daniel Altland
P. Daniel Altland, Esquire
Sup. Ct. I.D. #25438

3401 North Front Street
P.O. Box 5950
Harrisburg, PA 17110-0950
(717) 232-5000

Attorneys for Defendant, Roger Morrison

DATE: March 16, 2001

CERTIFICATE OF SERVICE

I certify that I am this day serving a copy of the foregoing document upon the person(s) and in the manner indicated below, by depositing a copy of same in the United States Mail at Harrisburg, Pennsylvania, with first-class postage, prepaid, as follows:

Don Bailey, Esquire
4311 N. 6th Street
Harrisburg, PA 17110

Stephen S. Russell, Esquire
35 South Duke Street
P.O. Box 5167
York, PA 17405-5167

Steven J. Schiffman, Esquire
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METTE, EVANS & WOODSIDE

By: P. Daniel Altland

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: **CIVIL ACTION NO.: 1:CV-01-0083**
:
: **(Judge McClure)**
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CERTIFICATE OF CONCURRENCE AND NONCONCURRENCE

I certify that Steven J. Schiffman, Esquire and Stephen S. Russell, Esquire
concur in the within Motion and that I sought the concurrence of Don Bailey,
Esquire but it was not given.

METTE, EVANS & WOODSIDE

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